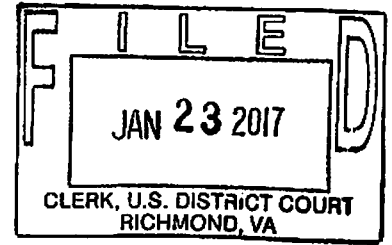


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



MARK E. RICHARDS,

Petitioner,

v.

Civil Action No. 3:15CV415

HAROLD W. CLARKE,

Respondent.

MEMORANDUM OPINION

Mark E. Richards, a former Virginia inmate proceeding pro se, submitted a 28 U.S.C. § 2254 petition. On April 11, 2016, Respondent filed an Answer and a Motion to Dismiss. On August 15, 2016, the Court received a Motion to Dismiss from Richards, in which Richards seeks to voluntarily dismiss this action without prejudice under Rule 41(a)(2) of the Federal Rules of Civil Procedure.

Because Respondent has filed an Answer, Richards may not dismiss this action as a matter of right. Fed. R. Civ. P. 41(a)(1)(A)(i). Nevertheless, a petitioner's motion for dismissal without prejudice should not be denied absent substantial prejudice to the respondent. See Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986) (citing Kenrose Mfg. Co. v. Fred Whitaker Co., 512 F.2d 890, 895 (4th Cir. 1972)). Respondent has not alleged, and the record does not suggest, that Respondent will suffer substantial prejudice if the action

is dismissed. Accordingly, Richards's Motion to Dismiss (ECF No. 27) will be granted. Respondent's Motion to Dismiss (ECF No. 22) will be denied as moot. The action will be dismissed without prejudice.

The Clerk is directed to send a copy of this Memorandum Opinion to Richards and counsel of record.

It is so ORDERED.

/s/ REP
Robert E. Payne
Senior United States District Judge

Richmond, Virginia

Date:

January 26, 2017
REP